

STATE OF MICHIGAN
COURT OF APPEALS

FOX MFG. CO.,

Plaintiff-Appellant,

v

FOX MANUFACTURING, INC.,

Defendant-Appellee.

UNPUBLISHED

July 20, 2001

No. 218391

Macomb Circuit Court

LC No. 98-004374-CZ

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition of plaintiff's claim under the Business Corporation Act, MCL 450.1101 *et seq.* We affirm.

Plaintiff was incorporated in Michigan in 1964 under the name "Fox Mfg. Co." for the purposes of buying, selling, manufacturing, producing, and synthesizing iron, steel, aluminum, plastic, wood, fiberglass, and metal products, as well as buying, selling, brokering, factoring, leasing, and mortgaging real and personal property in conjunction with the aforementioned purposes. Defendant was incorporated in Michigan in 1991 under the name "Fox Manufacturing, Inc." Defendant is engaged in the manufacture of commercial dishwasher soap and the rental of dish-washing equipment to restaurants.

Plaintiff filed the present action for injunctive relief, alleging that defendant's use of the name "Fox Manufacturing, Inc." violated MCL 450.1212. The trial court denied plaintiff's request to enjoin defendant from the use of that name and granted defendant's motion for summary disposition under MCR 2.116(C)(8).

I

On appeal, plaintiff argues that the trial court erred in dismissing this action because it properly pleaded a claim under the Business Corporation Act. Statutory interpretation is an issue of law that we review *de novo*. *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). Likewise, we review a trial court's decision on a motion for summary disposition *de novo*. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Simko v Blake*, 448 Mich 648, 654;

532 NW2d 842 (1995). All factual allegations in support of the claim are accepted as true and construed in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A motion under (C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could justify a right of recovery. *Id.*

In determining whether plaintiff properly pleaded a claim under the Business Corporation Act, we look to the plain language of the statute. If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Elia v Hazen*, 242 Mich App 374, 381; 619 NW2d 1 (2000). We may not speculate as to the probable intent of the Legislature beyond the words expressed in the statute. *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995). When reasonable minds may differ as to the meaning of a statute, the courts must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction which best accomplishes the statute's purpose. *Marquis v Hartford Accident & Indemnity*, 444 Mich 638, 644; 513 NW2d 799 (1994).

Plaintiff claims that defendant violated MCL 450.1212(1)(b)(i). That subsection provides:

(1) The corporate name of a domestic or foreign corporation formed or existing under or subject to this act shall conform to all of the following:

* * *

(b) Shall distinguish the corporate name upon the records in the office of the administrator from all of the following:

(i) The corporate name of any other domestic corporation or foreign corporation authorized to transact business in this state. [MCL 450.1212(1)(b)(i).]

The plain language of that statute requires a new corporation to incorporate under a name that is distinguishable from the name of any other corporation authorized to transact business in Michigan. However, that language does not provide a valid basis for the present cause of action. Subsection (3) provides: "The fact that a corporate name complies with this section does not create substantive rights to the use of that corporate name." MCL 450.1212(3). Thus, we conclude that the plain language of the act precludes the present suit. Plaintiff's claim is based on its alleged right as the corporation bearing the name "Fox, MFG. Co." to preclude a corporation allegedly violating the requirements of MCL 450.1212 from continuing to utilize its name. Subsection (3) plainly provides that plaintiff's own compliance with corporate name requirements did not give plaintiff's substantive rights in its name. Therefore, plaintiff's claim that defendant violated MCL 450.1212 fails as a matter of law. *Maiden, supra*.¹

¹ Furthermore, plaintiff has failed to plead how defendant's name is not distinguishable from plaintiff's name. MCL 450.1212(1)(b). Plaintiff's pleadings focus on the standard employed prior to amendment of § 1212(1)(b); whether a corporation's name is "confusingly similar to"

(continued...)

II

Plaintiff next argues that the trial court erred in granting summary disposition in regard to its unfair trade practice theory. Importantly, plaintiff never pleaded such a theory independent of its Business Corporation Act claim. Plaintiff's one-count complaint specifies: "[T]his is a Complaint for equitable relief pursuant to MCL[] 450.1212." Plaintiff alleged that defendant's conduct of filing articles of incorporation using the name "Fox Manufacturing, Inc." violated MCL 450.1212(1)(b)(i), and led to confusion or deception. While plaintiff further alleged that defendant knowingly used its similar name to unfairly compete with plaintiff, that allegation like all the others contained in the complaint, was brought in connection to plaintiff's violation of the Business Corporation Act count.² MCR 2.113(E)(3) requires each statement of a claim for relief to be stated in a separately numbered count. Plaintiff's entire complaint was premised on an alleged violation of MCL 450.1212(1)(b)(i), and for the reasons stated prior, plaintiff failed to state a claim on which relief can be granted. Accordingly, the trial court properly granted summary disposition of plaintiff's claim under MCR 2.116(C)(8). *Maiden, supra*.

Affirmed.

/s/ Jane E. Markey
/s/ Kathleen Jansen
/s/ Brian K. Zahra

(...continued)

another corporate name. See MCL 450.1212, as amended by 1982 PA 407. Defendant's name "Fox Manufacturing, Inc." is different from "Fox MFG. Co." and, therefore, is distinguishable under the plain language of MCL 450.1212.

² Defendant's assumption within its brief on appeal that plaintiff pleaded a separate theory of recovery based on unfair trade practices is inapposite of this issue. A review of plaintiff's complaint establishes that each of plaintiff's allegations were connected with defendant's alleged violation of the Business Corporation Act. Plaintiff did not plead an independent count based on any unfair trade practice.